177 Pa. 643; *Matter of White Plains Water Com'rs,* 176 N. Y. 239; *Spaulding* v. *Peabody,* 153 Mass. 129; *Queens Co. Water Co.* v. *Monroe,* 83 N. Y. App. 105.

PROCESS—EXEMPTION FROM SERVICE OF NON-RESIDENT DEFENDANT.—The defendant, a resident of the state of Minnesota, had gone into the state of venue, without extradition, to answer the charge of embezzlement. After his discharge on bail but before leaving the court room he was served with a summons, complaint, and order for arrest, in a bail and arrest proceedings. He then filed a petition for a writ of habeas corpus which was denied in the lower court. *Affirmed* on the ground that the reason for the rule which exempts witnesses and parties to a civil suit from service of process in another action is not present here. The reason of the rule as given is that since such persons cannot be compelled to submit themselves to the civil jurisdiction of the courts of a foreign state, furtherance of justice requires that they should be privileged from service of process in order to secure their voluntary attendance. *Ex Parte Hendersen* (N. D. 1914), 145 N. W. 574.

The court in arriving at this decision follows what seems to be the weight of authority on a question of which the courts have taken opposite views. Of the contrary holding the following are the leading cases: *Murray* v. *Wilcox,* 122 Ia. 188, 97 N. W. 1087, 64 L. R. A. 534, 101 Am. St. Rep. 263; *Kaufman* v. *Gardner,* 173 Fed. 550; *Martin* v. *Bacon,* 76 Ark. 158; 6 A. & E. Ann. Cas. 336; *Moletor* v. *Sinned,* 76 Wis. 308, 7 L. R. A. 817, 20 Am. St. Rep. 71; *Hattabaugh* v. *Boynton,* 140 Wis. 89. Without exception the above cases rely on cases involving civil suits as authority for the proposition that the defendant should be exempt from service of process. Some of them recognize that other courts have drawn a distinction between civil and criminal actions, but refuse to consider the distinction as a valid one, either because as they say to do so would be to incorporate in the rule a refinement that was never intended, or that it would tend toward a corrupt use of the power of extradition. It would seem that the latter objection is overcome by the fact that a remedy is given by law for an abuse of the power of extradition. If the reason for the rule is that given in the instant case (and all the courts agree that such is the reason), then the result arrived at is undoubtedly correct, for in criminal cases where the power of extradition exists, the reason for the rule failing the rule itself has no application.

SALES—DELIVERY AS A CONDITION PRECEDENT TO PASSAGE OF TITLE.—Plaintiff sold coal to defendant, to be delivered "alongside" vendee's "dock at Syracuse, N. Y." When two canal-boat-loads of coal arrived at Syracuse, and approached to within 300 or 400 feet of vendee's dock, the boat captain notified vendee of their arrival, and an entry of the time of arrival and the quantity of coal was made in the books of the vendee. The boat could not be docked because other boats occupied the docks, and in accordance with traffic rules, the boats moved to the opposite side of the canal; by reason of a break in the canal and without fault of the vendor the coal was lost.

Vendor sues for purchase price. *Held,* (KRUSE, J., dissenting), vendor cannot recover. *Westmoreland Coal Co.* v. *Syracuse Lighting Co.,* 145 N. Y. S. 420.

The opinion of the court says: "The carrier was for this purpose [transportation] the plaintiff's and not the defendant's agent. * * * Delivery of the coal at the place specified in the contract was required to be made, and then only would the defendant's assent to such appropriation in part fulfillment of the contract be established, therefore title did not pass to the defendant." The case clearly holds, therefore, that delivery was a condition precedent to the passage of title, basing its decision on *McNeal* v. *Braun,* 53 N. J. Law. 617, 26 Am. St. Rep. 441; *Magruder* v. *Gage,* 33 Md. 344, 3 Am. Rep. 177; and *Bigler* v. *Hall,* 54 N. Y. 167. But not one of these cases is authority for the position the court took. KRUSE, J., dissenting, held that there being an appropriation by vendor and an assent by the vendee, by entry on the books, title passed, and since the property was lost through no fault of vendor, the vendee should stand the loss. But even though title had passed the vendor was not discharged of his contract duty to deliver. This was an absolute and unconditional promise which he was under obligation to fulfill. As a broad statement the following cases might be stated as holding that where one contracts to deliver at a specified place, such delivery is a condition precedent to passage of title. *Neimeyer Lumber Co.* v. *Burlington Ry.,* 54 Neb. 321, 40 L. R. A. 534; *Sneathen* v. *Grubbs,* 88 Pa. St. 147; *Braddock Glass Co.* v. *Irwin,* 153 Pa. St. 440; *Laughlin* v. *Marston,* 78 Wis. 670; *Hanaur* v. *Bartels,* 2 Colo. 514; *Devine* v. *Edwards,* 101 Ill. 138.

TRIAL—DIRECTING A VERDICT—EFFECT OF REQUESTS BY BOTH PARTIES.—In an action against a notary public for negligence in taking an acknowledgment, both parties, at the close of the evidence, requested a directed verdict without asking that any of the issues be submitted to the jury. *Held,* that this amounted to a withdrawal of the case from the jury and placed upon the court the duty of determining all matters of fact as well as of law. *Peterson* v. *Mahon,* (N. D. 1914), 145 N. W. 596.

The question involved in the instant case is one upon which there is an irreconcilable conflict of authority. In several states the rule is well settled that mutual requests for a directed verdict will under no circumstances amount to a waiver of a jury trial or relieve the jury from the duty of determining any and all disputed questions of fact. *Wolf* v. *Chicago Sign Printing Co.,* 233 Ill. 501; *German Savings Bank* v. *Bates Addition Imp. Co.,* 111 Iowa 432; *Stauff* v. *Bingenheimer,* 94 Minn. 309; *National Cash Register Co.* v. *Booneville,* 119 Wis. 222; *Lonier* v. *Ann Arbor Savings Bank,* 153 Mich. 253; *Farnum* v. *Davidson,* 3 Cush. (Mass.) 232. One court at least has taken the view directly opposed to these cases and has held that mutual requests of this kind amount to an absolute submission of the whole case to the court even though special instructions covering disputed matters of fact are requested. *Home Savings Bank* v. *Woodruff,* 14 N. M. 502. The rule announced in the principal case, which is also the rule in the United States courts, seems to be gaining in favor. It is to the effect that where